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International Court of Justice

H1244 – 0001

Frank
English

PLEA

FOR

HANS FRANK

before the

INTERNATIONAL MILITARY TRIBUNAL, NUERNBERG

in the trial of

Hermann Goering et al.

Submitted by

Dr. jur. Alfred S e i d l,

attorney - at - law,

Counsel for the defendant Hans Frank.

Englisch p. 16 !

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Frank

Mr. President, my Lords,

The defendant Dr. Hans Frank is accused in the Indictment of having utilized his posts in Party and State, his personal influence and his relations with the Fuehrer for the purpose of supporting the seizure of power by the National Socialists and the consolidation of their control over Germany. He is also accused of having approved, led and taken part in the war crimes mentioned in Count 3 of the Indictment, as well as in the crimes against humanity mentioned in Count 4, particularly in the war crimes and crimes against humanity committed in the course of the administration of occupied territories.

As I have already explained in the case of the defendant Hess, the Indictment fails to adduce any facts in substantiation of these accusations. It is similar in the case of the defendant Frank; here again the Indictment contains no statement of factual details to underpin the accusations.

Like all the other defendants, the defendant Frank is accused of having taken part in a common plan which is alleged to have had as its object the planning and waging of wars of aggression and the commission in the course of these wars of crimes which infringe the laws and customs of war.

The evidence has shown that the defendant Frank joined the National Socialist Party in the year 1928. Both before and after the

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assumption of power by the National Socialists, he was concerned almost exclusively with legal questions till the year 1942. The Reich Law Department was under his control as Reichsleiter of the Par After Adolf Hitler's appointment as Chancellor, Frank became the Bavarian Minister of Justice. In the same year he was appointed Reich Commissioner for the political coordination of legal institutions. This task consisted in the main of transferring to the Reich Ministry of Justice the functions of the administrative legal departments of the component States (Laender). That was completed in the year 1934. When the affairs of the Bavarian Ministry of Justice had been transferred to the Reich, the office of the defendant Frank as Bavarian Minister of Justice came to an end. In December 1934 he was appointed Reich Minister without Portfolio. In addition he became, from 1934, President of the Academy for Germany Law which he himself had founded, and President of the International Chamber of Law. Finally, he was the Leader of the National Socialist Lawyers' Association.

This list of the verious posts held by the defendant Frank in Party and State would alone be sufficient to show that his work was almost exclusively concerned with legal matters. His tasks were in the main confined to the execution of Point 19 of the Party Programme, which demanded a German Common Law. And in actual fact almost all speeches and publications by the defendant Frank, both before and after the assumption of power by the National Socialists, dealt with legal questions in the widest sense of the term.

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In the course of his examination in the witness-box, the defendant Frank testified that he had done everything he could to bring Adolf Hitler to power and to carry out the ideas and th programme of the National Socialist Party. But whatever the defendant undertook in this respect was done openly. Here I can for the most part refer to the statements I made in the case of the defendant Hess. The aim of the National Socialists before they assumed power can be expressed in a few words: Liberation of the German people from the shackles of the Versailles Treaty; elimination of the huge mass of unemployment which had arisen in consequence of that Treaty and of the unreasonable Reparations policy of Germany's former enemies; elimination of the signs of degeneracy - political, economic, social and moral - connected with that unemployment, and finally the restoration of the sovereignty of the German Reich in all spheres. The Prosecution was unable to produce any evidence to show that the revision of the Versailles Treaty was, if necessary, to be carried out by violent means and by war. The political, military and economic situation in which Germany found herself before the assumption of power - a situation in which it could only be a question of eliminating the terribl consequences of the economic collapse and of enabling seven million unemployed again to play their part in the economic process - necessarily made any serious thought of a war of aggression appear futile.

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Moreover, the evidence brought forth nothing to show the existence of the common plan alleged by the Prosecution in Count One of the Indictment, if by this we are to understand a particular, clearly defined plan evolved by a closely circumscribed, unchanging set of people.

As regards the participation of the defendant Frank in this common plan, the evidence and in particular the testimony given by the witness Dr. Lammers and the defendant himself in the witness box, has shown on the contrary that Frank did not belong to the circle of Hitler's closer collaborators. The Prosecution was unable to present to the Tribunal a single document dealing with important political or military decisions with which the defendant Frank was connected. In particular, the defendant Frank was not present at any conference with Hitler wh the Prosecution considered especially important for proving the alleged common plan, the minutes of which conferences the Prosecution has submitted as Exhibits USA Nos. 25 to 34.

The only statute which is important in this connection is the Law concerning the Re-introduction of General Conscription of March 16, 1935. In the case of the defendant Hess I have already explained in detail what led to the promulgation of that law and why it cannot be looked upon as an infringement of the Versailles Treaty.

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The defendant Frank signed that law in his capacity as Reich Minister, as did all the other members of the Reich Government. That law, which had as its object the restoration- at least in the military sphere - of the sovereignty of the German Reich, did no harm to any other nation. Nor did the content of that law or the circumstances which led to its enactment allow of the conclusion that it was part of a common plan whose object was the launching of a war of aggression. The German people had been obliged to realize during the preceding 17 years that the voice of a nation without military power, and in particular a nation in Germany's geographical and military situation, cannot make itself heard in the concert of nations if it has not at its disposal adequate instruments of power. The Government of the German Reich faced the consequences of this realization, after equality of rights had been promised the German people over and over again for fourteen years and that promise had not been kept, and in particular after it had become clear in the years 1933 and 1934 that the Disarmament Conference would not be capable of fulfilling its appointed functions. For the rest, I refer to the Proclamation of the Reich Government to the German people, which was issued in connection with the publication of that law.

Further: the work of the defendant Frank, even after the assumption of power, up to the beginning of the war, was confined almost exclusively to the execution of tasks connected with the leadership of the Academy for German Law and the National Socialist Lawyers' Association.

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Frank

The objects of the Academy for German Law are apparent from the Law concerning its establishment of July 11, 1943. It was intended to encourage the reform of German legal processes and, in close and constant cooperation with the appropriate legislative authorities, to put the National Socialist programme into practice in the whole sphere of law. The Academy was under the supervision of the Reich Minister of Justice and the Reich Minister of the Interior. The function of the Academy was to prepare drafts of statutes. Legislation itself was exclusively a matter for the appropriate Reich Ministries for the various departments. One of the tasks of the Academy was to exercise the functions of the legal committees of the former Reichstag. In actual fact the work of the Academy was done almost exclusively in its numerous committees which had been established by the defendant. Entry into the Academy was not dependent on membership of the Party. Most of the members of the Academy were legal scholars and eminent practitioners of law, who were not Party members. Moreover, it is well known that the Academy for German Law kept up close relations with similar establishments abroad, and that numerous foreign scholars gave lectures in the Academy. These facts entirely exclude the assumption that the Academy could have played any important part in the common plan alleged by the Prosecution. The same is true of the position of the defendant Frank as Leader of the National Socialist Lawyers' Association.

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Adolf Hitler's attitude to the conception of a State resting on law (Rechtsstaat), in so far as any doubt could still have been entertained about it, has become perfectly clear through the evidence presented at this trial. Hitler was a revolutionary and a man of violence. He looked on law as a hindrance and as a disturbing factor in the realization of his plans in the realm of power politics. Moreover, he left no doubt about this attitude of his and spoke about states under rule of law in a number of speeches. He was always very reserved in his dealings with lawyers, and for this reason alone it was impossible from the outset that any close association could have developed between him and the defendant Frank. The defendant Frank considered it his life's work to see the conception of a State resting on law realized in the national Socialist Reich, and above all to safeguard the independence of the judiciary.

The defendant Frank proclaimed these principles as late as in the year 1939, before the outbreak of war, in a great speech he made before 25 000 lawyers at the final meeting of the Congress of German Law in Leipzig. Among other things he declared on that occasion:"1. No one shall be sentenced who has not had an opportunity of defending himself.

2. No one shall be deprived of his property, provided that he uses it unobjectionably from the point of view of his fellow-men, except by judicial sentence . Legal property in this sense are: Honour, freedom, life, earnings from work.

3. An accused person, no matter under what procedure, must be enabled to procure someone /to defend him who is capable of making legal

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statements on his behalf; he must have an impartial hearing according to law. If these principles are applied to their full extent, then is the germanic ideal of law fulfilled."

These principles constitute an unmistakable repudiation of all methods employed in a police-ruled State and imply moreover the unmistakable rejection of the system of concentration camps. The defendant Frank . · had actually spoken against the establishment of concentration camps before the date indicated. The evidence has shown that in the year 193 he, in his capacity as Bavarian Minister of Justice, was oppos to the concentration camp of Dachau, that he urged the application of the so-called legality principle (i.e. the prosecution of all offences by theState) even in these camps, and that, ov and above this, he demanded the dissolution of the concentrati camp of Dachau. That this last is a fact is shown by the evidence - taken on commission- of the witness, Dr.Stepp.

The Prosecution also appears to see in the sentence "Law is what is useful to the people" an indication of the participation of the defendant Frank in the alleged common plan. Such a conclusion could only be drawn from a complete misapprehension of the idea which the defendant Frank wished to express by means of this sentence. It is merely the issue of a challenge to the individualistically over-sensitized legal min In the same sense as is implied in the phrase "The common good before one's own", the sentence quoted is intended

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to express the demand for a legal system which, to a greater extent than in previous years, takes account of common law and socialists tendencies. It is in reality nothing more than a different way of saying: Salus publica suprema lex .

These material differences alone would have been sufficient to make it unthinkable that the defendant Frank could have belonged to the inner circle of Hitler's collaborators. The difference of outlook in regard to the functions of law were bound to become more apparent in the course of the war. It could therefore cause no surprise that after the death of the former Reich Minister of Justice Dr. Guertner, it was not the defendant Frank who was appointed as his successor, but the President of the People's Court Dr. Thierack.

To sum up: It may be said that there is no factual foundation for the assumption that the defendant Frank participated in a common plan which had as its object the waging of an aggressive war and in connection therewith the commission of crimes against the rules of war. Before I turn to the points of accusation brought against the defendant Frank within the framework of his career as Governor-General, I will refer shortly to his responsibility under penal law as a member of the organizations accused of criminality.

In so far as Frank's responsibility as member of the Reich Government is under investigation, I can here refer in the main to my statements regarding the defendant Hess. The only difference

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lies in the fact that whereas Hess too was only Reich Minister without Portfolio, he had - as the Fuehrer's Deputy under the Fuehrer's Decree of July 27, 1934 -.a considerable part to play in the preparation of laws. That was not the case with the defendant Frank. He had hardly any influence at all on the legislation of the Reich. That is why he was co-signatory of so extraordinarily few Reich laws. With the exception of the law by which general conscription was re-introduced, his name is to be found under none of the laws which the Prosecution has presented to the Tribunal as relevant to the proof of the criminal nature of the Reich Government as an organization.

The defendant Frank, in his capacity as Reichsleiter and Leader of the Reich Law Department was also a member of the Leadership Corps of the National Socialist Party. An investigation of this point of accusation seems all the less called for, as no acts can be attributed to the defendant Frank which fulfil the requirements of any penal law. For the rest, I can here too refer to my statements in the case of the defendant Hess.

In the Annex to the Indictment it is alleged that the defendant Frank was a General of the SS. The evidence has shown that Frank at no time belonged to the SS and that he did not even have the honorary rank of a general of the SS. On the other hand, he was an Obergruppenfuehrer of the SA. With respect to the application made by the Prosecution to declare that organization criminal too,

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the same may be said as in the case of the application to declare the Leadership Corps criminal. The Charter and the Prosecution here again depart from a principle which has hitherto been considered an indispensable component of any modern criminal law practice, namely that no punishment is admissible unless guilt has been established in every individual case.

My Lords!

I now pass to the points of accusation in connection with the career of the defendant Frank as Governor-General. When the Polish Government had left the country after Poland's military collapse, the German occupying forces were faced with the task of building up an administration without the help of any parliamentary representation or any representatives of the former Polish State. The difficulties arising out of this situation were bound to be all the greater because - in spite of the comparatively short time that the war had lasted - the war damage, especially to the communications system, was not inconsiderable. Above all, however, the establishment of an orderly administration was rendered more difficult by the fact that the unitary economic territory of the former Polish State was divided into three parts. Of the 388 000 sq.km. which made up the territory of the former Polish State, about 200 000 sq. km. were taken over by the Soviet Union, 97 000 sq.km. formed the Government-General, while the rest was incorporated in the German Reich. A change came on August 1, 1941. On that date Galicia was annexed to the Government- General as a new district, whereby the territory of the Government-General was increased to an area of approximately 150 000 sq.km. with 18 million

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inhabitants. This frontier-delimitation made all the more difficulties for the administration, as the agricultural excess products all went to the Soviet Union, while on the other hand, important industrial cities such as Lodz, and above all the coal-fields of Dombrowa, fell to the Reich.

Directly after the military collapse of Poland, a military government was set up to cover the four military districts of East Prussia, Posen, Lodz and Cracow, Commander - in- Chief East General von Rundstedt being placed at the head of that Government. The defendant Frank became Supreme Chief of Administration (Oberverwaltungschef).

The military Government ended on October 26, 1939, with the coming into force of the Decree of the Fuehrer and Reich Chancellor (October 12, 1939) concerning the administration of the occupied Polish territories. By this decree the defendant Frank was appointed Governor-General for the occupied Polish territories which were not incorporated in the Reich and which shortly afterwards became known as the "Government-General".

As the time at my disposal is short, I will not go into detail on the question as to whether the administration of the territories of the former Polish State jointly designated as the Government-General should have conformed to the principle of occupatio bellica(occupation of enemy territory), or whether it should not rather be assumed that the principles of debellatio (complete subjection and incorporation in a foreign State) were applicable in that case.

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I come now to the question of the powers vested in the defendant Frank by virtue of his office of Governor-General. According to Article 3 of the Fuehrer's Decree of October 12, 1939 the Governor-General was directly subordinate to the Fuehrer. The same provision placed all branches of the administration in the hands of the Governor-General.

In actual fact, however, the Governor-General had by no means such wide powers as it would seem at first sight. The Fuehrer's Decree itself provided in Article 5 that the Ministerial Council for the Defence of the Reich could also make laws for the territory of the Government-General.

The Plenipotentiary for the Four-Year-Plan had the same power. Article 6 provided that over and above this all the highest Reich authorities could issue decrees necessary for planning within the German living space and economic area, and that these would be effective also for the Government-General.

Apart from this limitation of the authority of the Governor General, as provided in the Fuehrer's Decree of October 12, 1939, other powers were conferred at a later date, which impaired to an equal degree the principle of a military administration. That is particularly true of the position of the Plenipotentiary for Labour. I refer at this point to the appropriate documents presented by the Prosecution and the Defence, in particular to the Fuehrer's Decree of March 21, 1942, in which it is expressly provided that the powers of the Plenipotentiary for Labour extended to the territory of the Government-General. The whole armament industry in the Government-General was at first in the hands of the OKW; after the establishment of the Reich Ministry of Armaments, it came under the jurisdiction of the latter.

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The evidence has also shown that in other directions too the principle of military administration was extensively infringed. For this I refer to the Statements of the witnesses Dr. Lammers and Dr. Buehler and to the content of the documents submitted by me, especially the document USA 135. This deals with the directives in "special matters concerning instruction No. 21" (case Barbarossa)", in which it is expressly provided that the Commander-in-Chief of the Army shall be entitled " to order such measures in the Government -General as are necessary for the execution of his military duties and for safeguarding the troops", and in which the Commander-in-Chief is empowered to delegate his authority to the Army groups and armies.

All these infringements of the principle of a unitary administration of all special powers, however, pale beside the special position allotted to Reichsfuehrer SS Himmler even in respect of the territory of the Government-General. The evidence, and particularly the testimony of Dr. Bilfinger, councillor (Oberregierungsrat) in the RSHA, shows that as early as in 1939 when the defendant was appointed Governor-General, a secret decree was issued in which it was provided that the Higher SS and Police-Leader East was to receive his instructions direct from the Reichsfuehrer SS and Chief of the German Police Himmler. Similarly, it is provided in the Decree of the Fuehrer and Reich Chancellor for the Consolidation of the German Nation that

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the Reichsfuehrer SS should be directly empowered to effect the formation of new German Settlement areas by means of re-settlements. These two decrees conferred on the Reichsfuehrer SS powers which from the very first day of the existence of the Government-General were to confront its administration with almost insurmountable difficulties. It was very soon evident that the general Administration under the Governor - General had at its disposal no executive organs in the true meaning of the term. Since the Higher/SS & Police-leader East received his instructions and orders direct from Reichsfuehrer Himmler and refused to carry out instructions emanating from the Governor-General, it was very soon seen that in reality there were two separate authorities ruling over the Government-General. The difficulties which thus arose were bound to become all the greater as Higher SS & Policeleader Krueger, who for not less than four years was Himmler's direct representative in the Government-General, did not even inform the administration of the Government-General before carrying out police measures.

It is a well-known experience in constitutional life that any administration lacking executive police organs is in the long run not capable of carrying out its appointed functions. This is even true under normal conditions, but must be more especially the case in the administration of occupied territory. If we remember moreover not only that Reichsfuehrer SS Himmler issued his instructions direct to the Higher SS & Police leader, ignoring the Governor-General, but that over

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and above this the offices III, IV, V & VI of the RSHA also gave direct orders, namely to the Commander of the Security Police and the SD in Cracow - then we can assess the difficulties with which the civil administration of the Government-General had to wrestle day by day.

Under these circumstances the Governor-General had no choice but to make every attempt to reach some form of cooperation with the Security Police, unless he was prepared to relinquish entirely any hope of building up a civil administration in the Government-General. And in fact the history of the administration of the Government-General - which lasted more than five years - is for the greater part nothing but a chronicle of uninterrupted struggles between the Governor-General and the administration on the one hand and, on the other, the Security Police (including the SD) represented by Reichsfuehrer SS Himmler and the Higher SS & Police leader East.

The same applies to the work of Himmler and his organs in the field of re-settlements. As Reichs Commissioner for the Consolidation of the German Nation Himmler and his organs carried out re-settlement measures without even getting into previous contact with the administration of the Government-General or informing the Governor-General.

The numerous protests of the Governor-General, addressed to Dr. Lammers, Reichsminister and Chief

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of the Reich Chancellery, with regard to the measures taken by the Reichsfuehrer and the Higher SS & Police leader East and the difficulties they put in the way of the administration of that territory, have been established by the evidence. These protests led in the year 1942 to an attempted new regulation of the relationship between the administration and the police. In retrospect it can be said today as a result of the evidence that even this attempt was only utilized by Himmler and the Security Police to undermine internally and externally the position of the Governor-General and his civil administration.

By Decree of the Fuehrer, dated May 7, 1942, a State Secretariat for Security was established in the Government-General, and the Higher SS and Police-leader was appointed State Secretary. According to Article II of this Decree the State Secretary for Security also became the representative of the Reichsfuehrer SS in his capacity as Reichs Commissioner for the consolidation of the German nation. The decisive provision of this decree is contained in Article IV in which it is stated verbatim:

"The Reichsfuehrer SS and Chief of German Police can issue direct instructions to the State Secretary for Security in matters pertaining to Security and the Consolidation of the German nation."

Herewith the content of the secret decree issued in the year 1939 on the establishment of the Government-General

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- which also provided that the Higher SS & Police leader East was to receive his instructions direct from the Berlin central offices and above all from the Reichsfuehrer SS in person - was expressly and now publicly confirmed, It is true that Article V of the Fuehrer Decree of May 7.1942 provided that in case of differences of opinion between the Governor-General and the Reichsfuehrer SS and Chief of German Police the Fuehrer's decision was to be obtained through the Reichs Minister and Chief of Chancellery.

Chief of the Reich Chancellery Lammers was interrogated on this subject when he appeared as witness before this Tribunal. He testified that in so far as he found it possible at all to gain the Fuehrer's ear in these matters, the latter on principle invariably approved Himmler's view. This is not surprising if we remember Himmler's position in the German Governmental system, particularly during the later war years. This deprived the defendant Frank of the last possibility of influencing in any way the measures taken by Himmler and the Higher SS and Police leader East.

In consequence of Article I, para 3 of the Fuehrer decree of May 7,1942, the scope of duties of the State Secretary for Security had to be newly defined. Both the Higher SS and Police leader, and backing him, the Reichsfuehrer SS, attempted to bring as much as possible under their jurisdiction in connection with the new regulation of the competence of the State Secretariat; on the other hand, the Governor-General, in the interest of the maintenance of some sort of order in the administration, naturally tried to obtain control of at least certain departments of the order Police and the administration Police. There is no doubt at all that it was the Police that emerged the victor in these struggles.-

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On June 3, 1942 the Governor-General was obliged - in a decree concerning the transfer of offices to the State Secretary for Security - to declare himself willing to transfer to the State Secretary all the departments of the Security Police and the order Police. I have submitted this decree to the Tribunal (together with its two appendices A and B) in the course of the evidence as Exhibit Frank No.4. The two appendices list all the departments of the order and security police that have ever existed in the German Police system. In Appendix A, which covers the departments of the order police, there are 26 numbers in which not only all the departments of the order police are transferred to the State Secretary for Security, but over and above that, almost all the departmental functions of the so-called administration police. I will only mention No.18 as one example among many. This transfers to the order Police, and therewith to the Higher SS and Police leader, all matters connected with price control. What is true of the order Police is true in still greater measure of the departments of the Security Police. No change as compared with the earlier situation was brought about by placing under the jurisdiction of the Higher SS and Police leader the whole of the political and criminal police, political intelligence, Jewish affairs and similar departments; these competencies were already his as leader of the Security Police and the SD, and were made entirely independent of the administration of the Government-General under the secret decree of the year 1939. Departments were also transferred to the State Secretary for Security which had only the remotest connection with the tasks of

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the Security Police - i.e. matters such as the regulation of holidays and so on. Of no inconsiderable importance are the two last numbers in the appendix A and B, in which it is expressly provided that at conferences and meetings, particularly with the central Reich authorities, - on all matters pertaining to the Order-and security police, the Government-General - not the Governor - should be represented by the Higher SS and Police Leader. Therewith any competency possessed by the Governor-General, even in regard to comparatively unimportant branches of the Administrative police, was transferred to the organs of Reichsfuehrer SS Himmler, and the Government-General was thus deprived of even the last remnants of an executive of its own.

Only by considering these facts and the development of the conditions obtaining between administration and police in the Government-General is it possible to form an even approximately correct appreciation of the events in the Government-General which form part of the subject of the indictment in this trial.

Your Lordships !

The Prosecution seeks to prove its accusations against the defendant Dr. Frank in the main by quotations from the defendant's diary. In this connection I have the following basic observations to make:

That diary was not kept personally by the defendant Frank, but was compiled by stenographers who were present at Government conferences and other meetings with the Governor-General. The diary consist of 42 volumes with not less than 10 - 12000 pages of typescript;

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with one exception, the entries were made, not as a result of dictation by the Defendant, but in the form of stenographers' transcripts. For the greater part - and this is evident from the Diary itself - the authors of this Diary did not record the various speeches and remarks word for word, but made a summarized version in their own words. The entries in the diary were not checked by the defendant and - again with one single exception - were not signed by him. The attendance list stapled into several volumes of the diary - they are only contained in such volumes as relate to Government conferences - cannot be looked upon as a substitute for a confirmatory note. Moreover, the evidence has

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Above all however it seems to me essential to point out the following:

The content of any document is of material evidential import only in so far as the document is investigated in its entirety. The diary of the defendant Frank with its 10 - 12 000 pages is one uniform document. It is improper to put in as evidence certain single entries without showing the context in which alone some of them can be understood. But it is particularly improper - and this infringes the principles of any presentation of evidence - to select from some uniform whole, such as a long speech, a few sentences and put them in as evidence, In Document Book No. II I have listed a few examples of this and hereby refer to them.

As the defendant Frank himself rightly pointed out in the witness-box, the diary is a uniform whole; only in its entirety can it be probative and form part of the presentatic of evidence I have read through that diary of more than 10 000 pages and can only confirm his opinion. And that was why I did not use single entries in presenting my evidence, but put in the whole diary.

If I myself, in presenting evidence, have read certain single entries from the diary - and if in the course of my present address I shall quote a few more passages from it, - then, just as in the case of the extracts put forward by the prosecution, their evidential value can certainly

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only be gauged within the framework of the whole diary .

The following may also be looked upon as having been established by the evidence: As the diaries show, and as is evident in particular from the testimony given by the witnesses Buehler, Boepple and Meidinger, the defendant Frank in his capacity of Governor-General often made two or three improvised speeches in the course of one day.

The extracts from the diary presented by the Prosecution consist for the most part of single sentences from such speeches. If we take into consideration both the temperament of the defendant and his habit of expressing himself in an incisive manner, then that is another reason which tends to reduce the probative value of these extracts from the diary. And we actually do find many diary entries which flatly contradict other entries on the same subject occurring a little earlier or later.

In connection with the many speeches made by the defendant Frank, the following must not be left out of consideration.(And this too may be looked upon as established by the evidence): It was a foregone conclusion that the defendant Frank, as open champion of the idea of a State resting on law and of the independence of the judiciary, would come into increasingly sharp conflict with the representatives of the Police-State System; this developed to an ever greater degree in the course of the war both within the Reich territory and in occupied country. The represen-

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tatives of the police-state however were Reich Fuehrer SS Himmler and - for the area of the Government-General - the Higher SS and Police-Leader East, above all and in particular SS Obergruppenfuehrer and General of Police Krueger. The relations between the defendant Frank on the one hand and Reich Fuehrer SS Himmler his and representative Obergruppenfuehrer Krueger on the other, had been extremely bad even at the time when the Government-General was established. They deteriorated still more as the divergence of outlook concerning the tasks of the police came ever more openly to th fore and the defendant Frank was forced to make increasingl strong protests to the Chief of the Reich Chancellery, Dr. Lammers and to the Fuehrer himself concerning the violent measures taken by the Security Police and the SD.

As I have already mentioned, the Governor-General, lacking an executive of his own, had on the other hand no choice but to make repeated attempts to co-ordinate the wor of the general administration with that of the police, in order to be in a position to carry out any administrative w at all. Obviously these objectives demanded - at least on t face of things - a degree of conciliation towards the gener attitude of the security police and above all of the Higher SS and Police Leader East. Moreover the evidence has furth established that the tension existing between the Governor-General and the Higher SS and Police Leader often reached s a degree that the defendant Frank could not but feel himse menaced and - to quote the words of the witness Buehler - was no longer a free agent and master of his own decisions.

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The testimony of the witnesses Bach-Zelewsky and Dr. Albrecht leave no possible doubt on this point. Quite rightly therefore the witness Dr. Buehler also pointed out that the defendant Frank expressed himself with particular vehemence when the Higher SS and Police Leader or the Commander in Chie of the Security Police and the SD were present at conferences and that his utterances were made on quite a different note when he was speaking to an audience composed only of members of the administration. Even a cursory inspection of the diary will confirm this. All these circumstances must be taken into consideration in assessing the substantive evidential value of the defendant Frank's diary. It should also be noted that these diaries constituted the only personal property that Frank was able to rescue from the castle at Cracow. On his arrest, he handed all the diaries to the officers who took him into custody. It would have been an ea matter for him to destroy these diaries.

Your Lordships!

I now turn to the separate accusations brought against the defendant and their legal aspects. The defendant Frank is accused of having approved, led and participated in war crimes and crimes against humnaity in the administration of occupied territory.

As the law stands, it rests on the principle that only a sovereign state, not an individual, can be a subject of International Law. To make international law binding on an individual, international law itself would have to lay down that a certain set of facts constitutes a wrong and that the rule thereby established is

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applicable to an individual creating such set of facts. Only in that way can individuals, who under the law as it stands are subjected only to municipal criminal law, by way of exception be bound directly by international law.

Deviating from this rule, operative international law, in exceptional cases only, permits a State to punish the national of an enemy State who has fallen into its power if, before his capture, he has been guilty of infringing the rules of war, But even here punishment is excluded if the deed was not committed on the person's own initiative but can only be attributed to his State of allegiance. Moreover, the conception of war crimes and their factual characteristics are the subject of great controversy both in judicial decisions and in legal literature.

Nor do the Hague Rules on Land Warfare, which form the Annex to the IVth Convention on the Laws and Customs of War on Land and purport to be a codification of certain sections of the law of war - nor do these Rules list any sets of facts which could be interpreted as a basis for the criminal liability of individuals. In Article 3 of this Convention it is on the contrary expressly provided that not individual but the State that has infringed the Rules may under certain circumstances be liable to pay an indemnity and is also responsible for all acts done by persons belonging to its armed forces.

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FRANK

In connection with the Hague Rules for Land Warfare, of 1907, the following should also be noted:

The principles therein enunciated were evolved from the experience of wars in the 19th Century. Those wars were confined in the main to the armed forces directly concerned in them.

Now, even the first World War overstepped this framework, and not only in respect of the geographical extent of the bellicose conflicts. On the contrary, the war became a struggle for extermination of the nations concerned, a struggle in which each belligerent party utilized the whole of its war potential and all its material and imponderable resources. War technique having been meanwhile brought to perfection point, the second World War was bound to destroy altogether the framework set up for the conduct of war by the Hague Rules for Land Warfare. That is easily shown by ocular demonstration: the present condition of Europe today reveals If we remember in addition that in Germany alone the greater part of almost every city has been destroyed as a result of bombing raids; and not only that, but that considerably more than a million civilians thereby lost their lives and that in a single major raid on the city of Dresden 300 000 people were killed -- then it will be possible to realize that the Hague Rules for Land Warfare (at any rate in respect of many activities coming under the rules of war) can no longer be an adequate expression of the laws and customs to be observed in waging war. But if any doubt should exist on this subject, then that doubt will certainly be removed on contemplation of the consequences of the two atom bombs which razed Hiroshi and Nagasaki to the ground and killed hundreds of thousands of people .

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Taking these circumstances into consideration, it is not possible to adduce the provisions of the Hague Rules for Land Warfare - even indirectly and by way of analogy - to establis individual criminal liability.

Seeing that this is the case, it must be looked upon as impossible to give a clear, general definition of the factual characteristics of so-called war crimes. Referring to the fact that even Article 6 of the Charter of the International Military Tribunal only purports to furnish a list of example: it will be realized that the question as to whether a certai line of conduct amounts to the commission of a war crime or not, can only be answered on the merits of each particular case and then only if all the circumstances are taken into consideration.

In the course of the presentation of evidence for the personal responsibility of the defendant Frank, the Prosecution submitted as Exhibit USA 609 (864 PS) minutes of a conference held by the Fuehrer with the Chief of the OKW on the future form of Polish relations to Germany. This Confere ce took place on October 17, 1939. It is alleged that these minutes alone, in which the administrative goals of the defendant Frank in the Government-General are said to be estal lished, reveal a plan or conspiracy at variance with the laws of warfare and humanity. This is an inadmissible conclusion at least in so far as the defendant Frank is concerned. The Prosecution was unable to prove that the Fuehrer entrusted

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the defendant Frank with a task in conformity with the administrative aims demanded in that conference. Moreover, this seems very unlikely, because the directives laid down at that conference dealt mainly with measures which could only be carried out, not by the general administration, but alone by the Security Police, the SD and the other organs and offices under Reichsfuehrer SS Himmler. In this connection special mention should also be made of the powers entrusted to Reichsfuehrer SS Himmler (before the date of that conference) in his capacity of Reich Commissioner for the Consolidation of the German Nation. Actually there is at the end of document USA-609 a reference to a commission with which Himmler was charged. In consideration of the fact that the defendant Frank, in the course of a short interview with Hitler about the middle of September 1939, had been told to take over the civil administration of occupied Polish territory as Chief of Administration and had not seen Hitler for a very long time after that, it can safely be assumed that the directives laid down at the conference between Hitler and the Chief of the OKW were intended, not for the defendant Frank, but for Reichsfuehrer SS Himmler, who was the only person to hav the necessary executive organs at his disposal.

Another document to which the Prosecution has referred and which is also alleged to show the criminality of the administrative aims of the defendant Frank is USA Exhibit No. 297 (EC 344-16). The content of this document is a discussion which the defendant Frank is said

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to have had on October 3, 1939 with a certain Captain Varain. The defendant Frank testified in the witness-box that he had never made any such or similar statements to an officer. Moreover, a comparison of the dates shows that this conversation, even if it should have taken place , can have no connection with the subject of the conference between the Fuehrer and the Chief of the OKW, the latter not having been held till October 17, 1939, that is at a later date.

Not within the framework of the evidence presented in connection with the personal responsibility of the defendant Frank, but in connection with the accusation of so-called "Germanization", a document was submitted with the number USA Exhibit 300 (661-PS). This is a memorandum entitled, "Legal aspects of German Policy towards the Poles from the ethno-political point of view". According to a note on the title page, the legal part of this was to serve as a model for the Committee of the Academy for German Law which dealt with legal nationality questions. This document can have no probative value in connection with the personal responsibility of the defendant Frank. He testified in the witness-box that he had given no instructions for the writing of that memorandum and that he was not aware of its content. Over and above this, it would seem that no substantive evidential value can be attached to that document within the scope of this whole trial.

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Nor is it evident from the memorandum who wrote it or who gave instructions that it should be written. Its whole form and content would seem to show that it is not an official document, but rather the work of a private individual. It was stated to have been found at the Ministry of Justice in Cassel. But in actual fact there has been no Ministry of Justice at Cassel for many decades. All these circumstances would point to the material probative value of this document as being at least extremely small.

But whatever the evidential value of minutes of conferences that took place in the year 1939 on the occasion of the establishment of the Government General, the following should be pointed out: In judging the conduct of the defendant Frank it is not of such essential importance to know what Hitler, he himself, or other persons said on one occasion or another, but what policy the defendant Frank actually pursued towards the Polish and Ukrainian peoples. And here there can be no possible doubt - on the basis both of the general result of the evidence and in particular of entries in the diary of the defendant himself - that he repudiated all tendencies and measures designed to effect germanization. That is shown with great clarity by the extracts from the diary which I have submitted to the Tribunal. Thus, on March 8, 1940, he declared at a meeting of department chiefs, i.e. to an audience of men who as leaders of the various main departments were deputed to put his directives into practice - at this meeting he declared the following:

" .... I have been charged by the Fuehrer to look upon the Government-General as the home of the Polish people. Accordingly no germanization of any sort or kind is possible

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In your departments you will please see that the two language principle is strictly observed; you will also point out to district and provincial officers that no violence is to be used in opposing such safeguarding of separate Polish existence. We have in a certain sense herewith taken over on trust from the Fuehrer the responsibility for Polish national life....". End of quote.

This declaration alone makes it apparent that the directives laid down in the Conference between Hitler and the Chief of the OKW on October 17, 1939 and contained in document USA 609 (864-PS) cannot possibly have been made the subject of the duties with which the defendant Frank was charged. On the other hand, in view of the entire work done by the Higher SS and Police-Leader East from the first day of his appointment, it can safely be assumed that it was Reichsfuehrer SS Himmler whom Hitler charged with carrying out the directives laid down at his conference with the Chief of the OKW.

A diary entry of February 19, 1940 is on the same lines; in this the defendant Frank advocates the formation of a Polish government or regency Council.

On February 25, 1940, at a service conference of department chiefs and district and municipal commanders of the District of Radom, the defendant Frank gave out in programm form his directives regarding general administration. On this occasion the defendant Frank said among other things: "1. The Government-General comprises that part of the occupied Polish area

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which is not a component part of the German Reich....

2. The Fuehrer has decreed that this territory is to be the home of the Polish people. The Fuehrer and General Field-Marshal Goering have impressed on me over and over again that this territory is not be subjected to germanization.

3. In accordance with the instructions we have received under the Fuehrer's decree Polish laws will remain in force here. End of Quote.

On June 7, 1942 the defendant Frank stated word for word as follows:

"It is not as rulers by violence that we come and go in thi country. We have no terroristic or oppressive intentions. Welded into the interests of Greater Germany, the living rights of the Poles and Ukrainians in this territory are also safeguarded by us. We have not taken away from the Poles and Ukrainians either their churches, their schools or their education. The German does not wish to de-nationalize by violent means. We are sufficient unto ourselves, and we know that people must be born into our community and that it is a distinction to belong to it. And that is why we can look the world in the face with this our work." End of quote.

These examples could be amplified by many more, which all show clearly that the measures taken, at any rate by Frank, were intended to care for the Polish nation and that he repudiated any terror policy.

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FRANK

I come now to the so-called "peace-enforcing action". When the campaign against Poland had ended in September 1939, that did not mean that all resistance had ceased. Very soon afterwards new centres of resistance sprang up, and when on April 9, 1940 German troops occupied Denmark and Norway and on May 10, 1940, the German Western Army had begun their attack, the leaders of the Polish resistance movement believed that (in consideration of the general political and military situation) the time for action had come. This resistance movement was all the more dangerous because scattered but not inconsiderable remnants of the former Polish Army were active in it. A large number of entries in the diary of the defendant Frank show that the security situation worsened from day to day during that period. Here for instance is an entry for May 16, 19/ "..... The general war situation requires that the most serious consideration be given to the internal security situation of the Government General. A large number of signs and actions lead one to the conclusion that there exists a widely-organized wave of resistance on the part of the Poles in the country, and that we are on the threshold of violent happenings on a large scale. Thousand of Poles are already organized in secret circles; they are armed and are being incited in the most seditions manner t commit all kinds of violence. " End of quote.

In consideration of this menacing general situation, the order was given - as the diary shows, by the Fuehrer himself - that in the interest of the maintenance of public security, all measures were to be taken to

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suppress the imminent revolt. That order was given through Himmler to the Higher SS and Police-Leader. The administration of the Government-General had at first nothing to do with it. It intervened however, in order as far as possible to prevent the security police and the SD from taking violent measures and to make sure that innocent people should under no circumstances lose their lives. The testimony given by the defendants Frank and Seyss-Inquart in the witness-box and the evidence given by the witness Dr. Buehler have shown that the efforts made by the administration of the Government General were in so far successful as all the members of the resistance movement rounded up by this special action were brought before a drum-head court-martial introduced by a decree issued in the year 1939; and moreover the decisions of this court were not carried out before being submitted to a Board of Pardon which in many cases modified the sentence.. The Chairman of the Pardon Board was - until his appointment as Reich Commissioner for the Netherlands - the defendant Dr. Seyss-Inquart. As his testimony revealed, no less than half the death sentences pronounced by the summary court were commuted to imprisonment by the Pardon Board. For the rest, as regards the so-called extraordinary peace-enforcing action, I refer to the oral testimony and to the extracts from the diary of the defendant Frank which I read into the record.

Within the framework of the charges against him personally, the defendant Frank is accused of having supported

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the re-settlement plans of the Reich Commissioner for the Consolidation of the German nation (Himmler) and of having thereby also committed a war crime. There is no question but that re-settlements, even if they are carefully planned and well-prepared, mean great hardship for those who are affected by them; in many cases a re-settlement means the destruction of a person's economic existence. Nevertheless it seems doubtful whether the effectuation of re-settlements constitutes a war crime or a crime against humanity, for the following reasons:

Germany today is being flooded with millions of people who have been driven from their homes and who own no property but what they carry with them. The misery thereby caused, which is bound to increase to an immeasurable degree in consequence of the devastation wrought by the war, is so terrible that the bishops of the Cologne and Paderborn ecclesiastical districts were moved on March 29, 1946, to bring this state of affairs to the attention of the whole world. Among other things they said:

"....Some weeks ago we found occasion to comment on the outrageous happenings in the East of Germany, particularly in Silesia and Sudetenland, where more than 10 million Germans have been driven from their ancestral homes in brutal fashion, no investigation having been made to ascertain whether or not there was any question of personal guilt. No pen can describe the unspeakable misery there imposed in contravention of all consideration of humanity and justice. All these people are being crammed together in the rump of Germany without

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means to found an existence there. It cannot be foreseen how these masses of people who have been driven from their homes can become other than peace-lacking and peace-disturbing elements."

End of quote.

My Lords!

I am not mentioning this in order to point out the enormuous dangers connected with such measures, dangers which must arise alone out of the fact that in view of her envisaged deprivations of territory, Germany - with an area reduced by 22% as compared with 1919 - will have to feed a population increased by 18% and that in future there will be 200 inhabitants to the square kilometer. I am further not pointing to this state of affairs to show that if the present economic policy is continued and the so-called industrial plan is maintained, Germany is heading for a catastrophe the consequences of which cannot be confined to the German people. The evidential relevance of these facts is however shown by the following:

Millions of Germans were driven from their ancestral homes in accordance with a resolution taken at Potsdam on August 2, 1945 by President Truman, Generalissimo Stalin and Prime Minister Attlee. In the joint declaration published on this subject there is the following passage:

"The conference reached the following agreement on the removal of Germans from Poland, Czechoslovakia and Hungary:

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The three governments having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken."

End of quote.

The expulsions and re-settlements carried out in execution of the Potsdam Declaration of August 2, 1945, are in so far of importance for the present trial, as these transfers were undertaken in accordance with a resolution of the governments of the same Powers who appear as Prosecutors in this trial and who as Signatories of the London Agreement of August 8, 1945 are the authors of the Charter of this Tribunal which forms an essential part of that agreement. From these facts only two conclusions can be drawn:

1. Either it is in accordance with operative international law to carry out transfers of population. Then, under the charter of this Tribunal there can be no war crime and no crime against humanity under the head of re-settlements. The evidence produced by the Prosecution therefore in connection with re-settlements must be looked upon as irrelevant, and it would be superfluous to enter further into the accusation against the defendant Frank in this respect

2. Or else: To carry out transfers of population is an infringement of the principles derived from the laws of all civilized nations and constitutes an offence. Then the same consequences result in respect of the jurisdiction of this Tribunal as I felt bound to point out in another connection in the case of the defendant Hess. Here too

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the Prosecutors would be making the object of a trial measures which they themselves have approved and carried out in the same way. And similarly the Tribunal would be making the object of a decision measures which the signatory Powers of the Potsdam Declaration of August 2, 1945 considered necessary, measures which 6 days later - in the charter for the International Military Tribunal - they declared punishable as war crimes and crimes against humanity.

My Lords!

This is not a case of investigating a set of facts from the point of view of formal law. These and similar questions, on the contrary, bring up for discussion the question of law in principle. Law is the embodiment of a number of rules which cannot at one and the same time have a varying validity for different localities. What is today looked on internationally as legitimate cannot yesterday have been a crime. Law can only exist as a uniform whole or it cannot exist at all.

Indeed the following must also be pointed out:

It is not only in connection with this set of facts, but also in other cases, that the Tribunal will have to answer the question whether the conduct of one or other of the Signatory Powers of the London Agreement of August 8, 1945, during or after the war, does not preclude the assumption that a war crime or a crime against humanity has been committed.

A whole series of facts however has been established in the course of the evidence to show that in reality the defendant Frank wherever he could do so, opposed all the plans for re-settlement made by the Reich Commissioner for the consolidation

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of the German Nation and the Higher SS and Police Leader. He did this, not only in recognition of the fact that any re-settlement however well planned and prepared means great hardship and has serious economic consequences for those affected by it, but above all because any re-settlement area would of necessity become a

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focus of unrest. I refer here to the statements of the defendant in the witness box and the testimony of the witnesses Dr. Buehler and Dr. Boepple. In the diary of the defendant Frank too, there are a number of entries in which the expresses himself as vehemently opposed to the re-settlements carried out without his knowledge by the Higher SS and Police Leader and SS GruppenfÜhrer Globocnig in the area of Lublin.

The defendant Frank is further accused of having approved and carried out a programme for the extermination of Jews of Polish nationality, thereby inflinging the laws of war and humanity. It is true that in a number of speeches given by the defendant Frank in his capacity as Governor-General, he revealed his point of view on the Jewish question. The extracts from the diary submitted by the Prosecution in connection with this matter comprise practically everything relevant thereto in the defendant Frank's diary of 10-12000 typed pages. Nevertheless it shall not be denied that the defendant Frank made no secret of his antisemitic views. He spoke in detail on this question when giving his testimony in the witness-box.

But the question of the importance to be attached to the diary entries submitted by the Prosecution is quite another matter. Almost all of them consist of statements made by the defendant Frank in speeches; but there has not even been an attempt

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by the Prosecution to prove the existence of a causal connection between these statements and the measures carried out against the Jews by the Security Police.

As a result of the evidence, in particular of the testimony given by the witnesses Dr. Bilfinger and Dr. Buehler it can be looked upon as certain - in connection with the secret Decree concerning the jurisdiction of the Security Police and the SD of the year 1939, and the Decree concerning the transfer of certain tasks to the State Secretary for Security - that all the measures concerning Jews in the Government-General were carried out exclusively by Reich Fuehrer SS Himmler and his organs. That is true both of the initiation and the organization of the so-called final solution of the Jewish question.

As regards the latter, it may be said here on the basis of the testimony given by the witnesses Wisliceny and Hoess and of the documents presented by the Prosecution that these measures were undertaken on Hitler's express orders and that only a small circle of persons was concerned in their execution. This small circle was confined in the main to a few SS leaders of Department IV a 4 b of the RSHA and the personnel of the concentration camps that had been selected for the purpose.

The administration of the Government-General had nothing to do with these measures. The above facts also show that the antisemitic statements by the defendant Frank submitted by the Prosecution have no causal connection with the so-called final solution of the

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Jewish question . Since a causal link must be established before the question of illegality and guilt can even be considered, it does not seem necessary to dwell further on the matter. All the less because the factual elements of many punishable offences can only be said to exist if at least an attempt has been made, that is, if the commission of the offene has at least been begun. Under the principles derived from the criminal law of all civilized nations, the statements contained in the diary of the defendant Frank do not even constitute preparatory acts.

In consideration of the tense and sometimes extremely frangible relationship between the Government General on the one hand and the Reichsfuehrer SS Himmler and the Higher SS and Police-Leader Krueger on the other, it would also seem to be impossible to look upon the statements of the defendant Frank as acts of incitement or complicity. The evidence has shown on the contrary that all the efforts of the defendant Frank to investigate successfully the rumours about the elimination of the Jews, at least within his own administrative district, failed of their purpose. Only to complete the picture need it be mentioned that the concentration camp of Auschwitz was not in the Government General, but in that part of Poland which was annexed to upper Silesia. For the rest, it can not be clearly seen whether the erection of concentration

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camps is in itself to be looked on as fulfilling the requirements of a war crime or a crime against humanity, or whether the Prosecution considers the establishment of such camps solely as part of the so-called common plan. Setting aside the crimes committed in the concentration camps, and considering the nature of concentration camps to be that in them people are confined for reasons of state and police security on account of their political opinions and without an opportunity of defending themselves in an ordinary court of law, it appears at least doubtful whether an occupying Power should not have the right to take such necessary steps as this in order to maintain public order and security. Apart from the fact that it was not National Socialists and not Germans at all who first established such camps, the following must be mentioned.

According to a statement dated January 14, 1946, by General Lucius D. Clay, Deputy Commander of the zone in Germany occupied by American troops, 250.000 to 300.000 people in that zone were at that time being detained on account of their political opinions. Obviously the occupying Power was convinced that the detention of such a large number of politically suspect persons was necessary for reasons of security and did not conflict with the provisions regulating the rights and duties pertaining to the administration of occupied territory particularly as expressed in the Hague Rules for Land Warfare.

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However, the letter already mentioned written by the bishops of the Cologue and Paderborn ecclesiastical district also refers to this question. I quote:

".... on the other hand we hope that the new rulers will do everything possible to re-awaken the consciousness of law in the German people and re-est blish the rights of the individual, thus preparing the way for the return to internal health of the German people.... We consider it however. our duty to declare that the dismissal without notice and without economic assistance of thousands of officials and industrialists, the arrest of further thousands wothout a Court sentence, their deprivation of liberty without an opportunity to defend themselves, without being able to communicate with their nearest relatives, has dealt a heavy blow to the peoples consciousness of law. If the way is to be prepared for th internal recovery of the people, then everything that reminds them of the Gestapo, concentration camps and similar things, must be banished from public life. Otherwise internal poisoning will set in,which will make a moral and religious regeneration extremely difficult, if not impossible." End of quote.

It is not necessary to go into this matter in more detail here, because the evidence has shown that it was the defendant Frank who from the first day of the National Socialists' assumption of power fought against the police-State system and, above all, stigmatized the concentration camps as an institution which could in no way be made to harmonize with the idea of a state resting on law In this connection I refer to the testimony given by the witness Dr. Stepp,

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to the defendant's own statement and above all to the extracts from the defendant's diary which I put in evidence. The evidence has further shown that the establishment and administration of the concentration camps lay within the sphere of Reichsfuehrer SS Himmler's organization. The camps, both in Reich territories and in all areas occupied by German troops, were exclusively under the command of the SS WVHA and / or the Inspector-General of the concentration camps. Neither the Governor General nor the general administration of the Government General had anything to do with these camps.

A further point of accusation against Frank is the charge that he supported violence and economic pressure as a means of recruiting workers for deportation to Germany. It is true that during the recent war, many Poles came to work in Germany. But in this connection the following should be noted:
Even before the first world war, hundreds of thousands of Poles came to Germany as vagrant workers. This stream of vagrant workers continued to flow in the period between the first and the second world wars. In consequence of the ill-fated demarcation line, the Government General became an area that was distinctly over-populated. The agricultural superfluity areas had fallen to the Soviet Union, whereas important industrial areas were incorporated in the Reich. Under these circumstances, because the were no riches to be found in the soil, the only valuable means of production lay in the working capacity of the population.

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And this - at any rate for the first few years - could not be absorbed to a sufficient extent, because the other production factors were lacking. In order to avoid unemployment and above all in the interest of maintaining public order and security, the administration of the Government General was bound, if only for reasons of state policy, to try to transfer as many workers as possible to Germany. There can indeed be no doubt that during the first years of the administration most of the Polish workers went to the Reich voluntarily. When later, in consequence of the continuous bombing raids, not only Germany's cities, but also her factories crashed in ruins and a not inconsiderable part of Germany's capacity for the production of war material had to be removed to the Government General for reasons of security, the aim of the defendant Frank was necessarily to put a stop to any further transfer of labor. Over and above this however, the defendant Frank had from the very beginning opposed all violent measures in recruiting labour, and alone for security reasons and in order not to create new centres of unrest, had insisted that no compulsory measures were to be used and only propagandistic methods employed. That is certain, as shown by the testimony of the witnesses Dr. Buehler and Dr. Boepple, and also by a large number of entries in the diary. In my presentation of evidence I have already referred to several of them. Thus, for example, the defendant Frank said among other things on March 4, 1940:

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"...I refuse to issue the decree demanded by Berlin, establishing compulsory measures and threatening punishment. Measures that viewed from the outside would create a sensation must be avoided under all circumstances. There is everything to be said against the removal of people by violence." End of quote.

On January 14, 1944 he made a similar statement to the Commander of the Security Police. I quote:
"The Governor General is strongly opposed to the suggestion that police forces should be used in recruiting labour." These quotations could be amplified by many more.

I refer further to the evidence presented by me in respect of the treatment of Polish workers in Germany. The defendant Frank continuously and repeatedly pleaded for better treatment of the Polish workers in the Reich.

For the rest, the legal position in the matter of recruiting foreign labour does not appear to be quite clear. I do not intend to go further into the legal questions pertaining to this matter.

In the literature of international law however, it is undisputed that the conception of vital stress (Notstand) as recognized in criminal law, would, in international law too, preclude illegality in the case of a violation of law committed within that framework.

If the vital interests of a State are endangered, the State may, these interests being paramount, safeguard them if necessary by injuring the just interests of a third party. Even those writers who deny the application of the "vital stress" theory

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to international law - they are in the minority - grant the threatened state the "right o self-preservation" and therewith the right to enforce "necessities of State" even at the cos of the just interests of other states. It is a recognized principle of international law that a state need not wait until the direct threat of extinction is at its very threshold. There can be no doubt that after the entry into the war of the United States, with which for all practical purposes the productive capacity and the military might of almost the whole world were gathered together to overthrow Germany, the German Reich was faced with a situation which not only threatened the State as such with extinction, but over and above that placed the bare existence of the people in jeopardy. Under these circumstances the right of the state leadership to make use of labour forces, even those in occupied territory, in this defensive struggle had to be acknowledged.

In addition, the following should not be passed over: The prosecution alleges that many, if not most of the foreign workers were brought to Germany by force and that they were the obliged to do heavy labour under degrading conditions. However one may look upon the evidence on this question, the fact cannot be ignored that there are hundreds of thousands of foreign workers still living in Germany who were allegedly deported thither by force. They refuse to return to their homes, although no one now attempts to hinder them. Under these circumstances it must be assumed that the force cannot have been as great, nor the treatment in Germany as bad as is alleged by the Prosecution.

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FRANK

Another allegation refers to the closing of the schools. It may be left out of account whether international law recognizes any criminal classification which would make the closing of schools appear as a war crime or a crime against humanity. In time of war this would seem to be all the more unlikely as it is well-known that schooling in war-time was considerably reduced, not only in Germany, but in many other belligerent countries. There is all the less reason to investigate this question more thoroughly, as the evidence has shown that the schools were for the most part already closed when the defendant assumed office as Governor-General. During his whole period of office he left no means untried to reactivate not only the elementary and technical, but also the higher forms of schools. In this connection I will only mention the University courses which he initiated.

The Soviet Prosecution has presented as USSR Exhibit No 335 a decree issued by the defendant to combat attacks against German reconstruction work in the Government General, dated October 2, 1943, There is no question but that this decree setting up a drumhead-court-martial is not in conformity with what must be demanded of Court procedure under normal circumstances. This decree can only be judged correctly if the circumstances which led to its promulgation are taken into consideration.

In general it should first be said that the reconstruction work of the administration of the Government General had to be

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carried on in a difficult territory and under circumstances which must be among the most difficult that have ever fallen to the lot of any administration. After the collapse of the Polish State, the German administration found so to speak an empty space in which to organize and administer. In all spheres of administration they had to start completely afresh. If in spite of the difficulties they succeeded fairly quickly in removing war damage, particularly in the communications system, then that is incontestably to their credit.

The year 1940 was however to prove the only one in which the work of restoration in the area of the Government General could be carried out under fairly normal conditions. As the year 1941 opened, the Germans began to concentrate their troops for action against the Soviet Union, and therewith initiated a period of immense strain for the administration of the Government General. The Government General became the greatest repair workshop and the greatest military transit territory that history has ever known. This carried in its train an increasing deterioration of the security situation. The resistance movement began to re-organize on an intensified scale. But the menace inherent in the security situation developed to a still more alarming degree when the German armies were forced to arrest their progress in Russia and when - after the catastrophe of Stalingrad - their march forward was transformed into a general retreat. In the course of the year 1943, the activities of the resistance movement and in particular of the numerous guerilla bands in which thousands of a-social elements were grouped, reached extremes that represented a danger to any kind of orderly administration. The administration of the Government General was forced again and again to deal with this matter. Thus on May 31, 1943 a service meeting of the government of the Government General was held to deal with the security situati

At that meeting the President of the Chief Department Internal Administration felt obliged to state among other things (I quote from the Diary):

".....In their activities the guerilla bands have revealed an increasingly well-developed system. They have now gone over to the systematic destruction of institutions belonging to the German administration; they steal money, procure typwriters and reduplication machines; destroy quota-lists and lists of workers in the communal offices, and take away or burn criminal records and taxation lists. Moreover raids on important production centres in the country have multiplied, for instance on saw-mills, dairies and distilleries, as also on bridges railway installations and post-offices. The organization of the guerillas has become strongly military in character". End of quote.

In the course of the Summer and Autumn of the year 1943, the increasing activities of the partisans and the improvement in their military organization and equipment so endangered security in the Government-General that it might perhaps under the circumstances have been better to turn over its entire administration to the appropriate army commanders, and to proclaim martial law. It is indeed not possible to describe the conditions then existing in the Government-General as anything else but a state of war. It was the period when at any moment the possibility had to be taken into account that a general revolt would break out over the whole country.

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All this notwithstanding ,, the defendant Frank even then made every effort thwart any violent measures by the security police and the SD under all circumstances. It was in order to exercise at least a modifying influence on the security police and the SD and to have at least some guarantee against excesses that the defendant Frank agreed to the order dated October 9, 1943, setting up a drumhead court-martial.

As is quite obvious from the content of this decree, its main purpose was to serve as a general preventive. It was mean as a deterrent to the guerillas, and there can be no question but that in this it was temporarily successful. For the rest, the evidence has shown that even while this drumhead court-martial Order was in operation, the Pardon Boards continued to act and that many sentences passed by the drumhead court-martial were reversed by the Pardon Boards.

In the course of the present trial repeated mention has been made of the report by SS Brigadefuehrer Stroop concerning the destruction of the Warsaw Ghetto in the year 1943. USA Exhibit 275 (1061 PS). Both that report and a number of other documents reveal that all the measures in connection with the Warsaw Ghetto were undertaken exclusivel. on the direct instructions of Reichsfuehrer SS and Chief of German Police Himmler. I refer in this connection to the affidavit of SS Brigadefuehrer Stroop of February 24, 1946, submitted by the Prosecution as USA Exhibit No. 804 (3841 PS), and to the affidavit of the same date given by the former Aide-de Camp of the SS and Police-leader of Warsaw, Karl Kaleske. USA Exhibit No. 803 (3840 PS). These documents

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show quite clearly that those measures, like all others within the competence of the Security Police and undertaken on direct orders from either Reichsfuehrer SS Himmler, the Higher SS and Police-Leader East, or on instructions from the RSHA, were carried out exclusively by the Security Police and the SD, and that the administration of the Government-General had nothing to do with them .

The Soviet Prosecution has also put in evidence as Exhibit USSR - 93 under Article 21 of the Charter the report of the Polish Government. That report makes no distinction between the areas which were incorporated in the German Reich and the territories of the former Polish State which were grouped together in the Government General. But with particular reference to the fact that the report makes no substantiated statements as to the personal responsibility of the defendant Frank it does not seem necessary to delve further into this voluminous document. Like the Indictment itself, the report constitutes an accusation of a genral nature; it does not deal in detail with the results of investigations and with evidence which might justify the conclusions drawn in the report. The objections to be raised to the report must appear all the more valid, as - to take only one example- in Annex (1) of the report directives for cultural policy are quoted in evidence which are obviously intended to represent instructions given by the Governor-

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General or his administration. Actually however nothing of the kind is to be found either in the order Gazette of the Government -General or in any other documents. The witness Dr. Buehler stated in his interrogation that the administration of the Government-General had never issued such or similar directives. In consideration of this alone, it would seem at most admissible to attach substantive probative value to this Exhibit USSR 93 in so far as the statements therein made are confirmed by genuine documents and other unobjectionab evidence.

According to the Indictment and in particular according to the statements in the trial brief presented by the Prosecution, the defendant Frank is also alleged to be responsible for the under- nourishment of the Polish population. Actually however the Prosecution is unable to produce any evidence to show that in the area governed by the defendant Frank either hunger-catastrophes occurred or epidemics broke out. The evidence has revealed on the contrary that the efforts of the defendant Frank in the years 1939 and 1940 were successful in inducing the Reich to deliver no less man 600 000 tons of grain. That made it possible to overcome the nutrition difficulties caused by the war.

It is true that in the following years the Government-General contributed in no small degree to the war effort by itself delivering grain . But it should not be overlooked that these deliveries were made possible by an extraordinary

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increase in agricultural production in the Government-General. And this was in its turn made possible by a far-seeing economic policy, especially by the distribution of agricultural machinery, seed-corn and so on. Nor should it be forgotten that the deliveries of grain by the Government-General from the year 1941 onwards, also served to feed the Polish workers placed in Reich territory, and that in general these grain deliveries were utilized to maintain the internal balance as between the European economic systems.

On this question the following basic observations should however be made:

In a number of points of accusation the prosecution has levelled reproaches against the administrative activities of the defendant Frank in his capacity as Governor-General, withoug making an attempt to give an even approximately adequate description of the general work of the defendant , and without pointing out its inherent difficulties. There can be no question but that such an attitude transgresses the fundamental rules of any criminal procedure. It is a recognized principle derived from the criminal law principles of all civilized states that a uniform natural process must be judged in its entirely and that its evaluation must rest on all the circumstances of the case

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that are in any way suitable for consideration by the Court when passing judgement. This would seem to be all the more necessary in the present case as the defendant Frank is accused of having pursued a long-term polic of oppression, exploitation and germanization.

My Lords !

If the defendant FRANK had in truth had any such intentions, then he could certainly have attained his goal in far simpler fashion. It would not have been necessary to issue hundreds of decrees every year, decrees which for example for the year 1942 reached the proportions of this volume that I ho here in my hand. The defendant FRANK from his first day of office set himself to intergrate all the economic forces in the area under his rule and pursued in particular an economic policy which one can only call constructive. Certainly he did this partly in order to strengthen the production capacity of the German nation engaged in a struggle of life and death. But just as little can there be any doubt that the success of this measures also benefited the Polish and Ukrainian peoples. I do not intend to go into this matter in detail. I will only ask the Tribunal in this connectio to take notice of the Report given by the Chief of Government on the occas the
on of/4th anniversary of the existence of the Government-General on Octobe 26, 1943.

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I have included this Report in the Document Books I put in evidence. It is in volume IV, page 42. The Report gives a concise summary of the measures taken and the successes achieved by the administrative acts of the defendant during those four years in all fields of industrial economy, in agriculture, commerce and transport, in finance and credit syster in the sphere of public health and so on. Only in consideration of all these facts is it possible to form an approximately correct estimate of the whole position. By way of marginal note I will add that the defendant by his administration succeeded in reducing the danger of epidemics - in particular typhus and typhoid - to a degree which had been found impossible in this area in the preceding decades.

If much of what had been achieved by the defendant Frank in the Government-General was destroyed in the subsequent fighting, that can certainly furnish no grounds for reproach against the general administration, which had nothing to do with military measures.

My Lords !

I am certainly not going to deny that in the course of the recent war terrible crimes were committed in the territory known as the Government-General. Concentration camps had been established, in which mass destruction of human beings was carried out. Hostages were shot. Expropriations took place, and so on. The defendant Frank would be the last to deny this;

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he himself waged a five-year struggle against all violent measures. The Prosecution has put in evidence as USA Exhibit No. 610 (437 PS) a memorandum which Frank addressed to the Fuehrer on June 19, 1943. In this memorandum on page 11 he listed 9 points in which he sharply condemned all the evils which had arisen in consequence of the violence practised by the Security Police and the SD and of the excesses committed by various Reich authorities, violence and excesses against which all his efforts had proved unavailing. These 9 points are in the main identical with the points of accusation against Frank. The content of the memorandum of June 19, 1943 however, shows very plainly that the defendant denies responsibility for these abuses. It reveals, on the contrary quite clearly that neither the defendant nor the general administration of the Government-General can be held responsible for the said evils, but that the whole responsibility must be borne by the institutions mentioned above, in particular the Security Police and the SD, and/or the Higher SS and Police-Leader East. If the defendant Frank had/had the instruments of power wherewith to abolish the evils he condemned, it would not have been necessary for him to address that memorandum to Hitler at all. He would then himself have been able to take all necessary steps. In addition to this the evidence has shown that that memorandum of June 19, 1943 was not the only one addressed to the Fuehrer on the matter. It is clear from the testimony of the witnesses Dr. Lammers and Dr. Buehler and the defendant's own statements in the witness-box that from the year 1940 onwards he (the defendant)

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sent protests and memoranda at regular intervals of a few months both to Hitler personally and to the Chief of the Reich Chancellery. These written protests were invariably on the subject of the violent measures taken and the excesses committed by the Higher SS and Police -Leader and the Security Police including the SD. But none of the protests met with success.

As can also be said on the basis of the evidence, the defendant Frank continually made suggestions to Hitler on the subject of improving relations between the administration of the Government-General and the population. The memorandum of June 19, 1943 too is cast in the form of a comprehensive political programme. It includes moreover all the essential points of protest contained in a memorandum presented in February 1943 to the Governor-General at his own desire, by the leader of the Ukrainian Chief Committee. This latter memorandum was put in evidence by the Prosecution as USA Exhibit No. 178 (1526-PS). Such suggestions were also consistently rejected by Hitler.

Under these circumstances it is pertinent to ask what else the defendant Frank could have done. Certainly he should have resigned. But that too he did. He offered his resignation no less than 14 times, the first time as early as 1939. His resignation was rejected by Hitler as often as it was tendered. But the defendant Frank did more. He approached Field-Marshal Keitel with the request that he be allowed to rejoin the Wehrmacht as lieutenant. That was in the year 1942. Hitler refused his consent to

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that too. These facts allow of only one conclusion, namely that Hitler saw in the defendant Frank a man behind whose back he (with the help of Himmler and the organs of the Security Police and the SD) could carry out the measures he considered requisite for attaining the aims of his power policy.

My Lords !

One thing the defendant Frank certainly did not do. He did not join the ranks of traitors to his country. He had no part in any scheme which had as its object the elimination of Hitler and which attempted to achieve that object by means which from the outset could only have been designated as ineffective. On the other hand, the defendant Frank undertook something else :

When it became more and more obvious that Hitler and Reichsfuehrer SS Himmler were about to abolish the last remnants of a state resting on law; when it became increasingly apparent that the power of the police knew no bounds and that a police-state of the purest water was in process of development, the defendant Frank came forward and addressed four great speeches to the German public with a last appeal on behalf of the idea of a state resting on law. He did that when Hitler stood at the summit of his power, He addressed this appeal to the German public at a time when the German forces were marching on Stalingrad and into the Caucasus, when the German panzer armies in Africa stood at El Alamein, barely 100 km from Alexandria. In the course of the evidence I read some extracts from these great speeches which the defendant Frank made

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in Berlin, Heidelberg, Vienna and Munich. Those speeches contained a clear repudiation of every form of police-state and championed the idea of the State resting on law, of the independence of the judiciary and of law as such. These speeches found a tremendous echo among lawyers, but unfortunately not in wider circles. Nor in particular were they echoed by the men who alone would have possessed the power to ward off the threatening catastrophe.

The consequences of this attempt to avert the extinction of the idea of the state resting on law by a last great effort are well-known. The defendant Frank was deprived of all his Party Offices, he was dismissed from his post as President of the Academy for German Law. The leadership of the National Socialis Lawyer's Association was conferred on Reich Minister of Justice Thierack. Frank himself was forbidden by Hitler to speak in public. Although the defendant Frank again on this occasion sent in his resignation as Governor-General, Hitler refused to accept it, as he had always done before. The reason for this , as given in a letter from the Reich Minister and Chief of the Reich Chancellery to the defendant Frank, was that considerations of foreign policy had caused the Fuehrer again to refuse this latest request of Frank to be allowed to resign. According to everything that has emerged from the evidence in this trial it may be looked upon as certain that it was not only (and probably not even mainly) for such reasons that Hitler refused to accept Frank's resignation.

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The decisive factor was obviously the consideration that it was better policy not to let the security police and Reichsfuehrer SS Himmler's other organs fulfil their appointed task openly, but rather to let them continue their work under cover, while maintaining a general civil administration under the Governor-General.

Naturally this open breach between the defendant Frank on the one hand, and Hitler and the state police system represented by Reichsfuehrer SS Himmler and the Higher SS and Police-Leader East on the other, could not fail to have repercussions on the position of the defendant in his capacity as Governor General. Still more than before the various Reich authorities now began to interfere in the administration of the Government-General. Above all however, it was quite clear from the summer of 1942 onwards that the Higher SS and Police-Leader East, together with the organs of the Security Police and SD subordinated to him, took no more notice at all of any instructions issued by the Governor-General and the general administration.

Both in the Government-General and in the Reich itself legal institutions receded more and more into the background. The State was transformed into an unadulterated police state, and developments took the inevitable course which the defendant Frank had foreseen and feared, the course which on November 19, 1941 he had outlined at a Congress of the principal section chiefs and Reich Group leaders of the National Socialist Lawyers Association in the following words :

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" Law cannot be degraded to a position where it becomes an object of bargaining. Law cannot be sold. It is either there or it is not there. Law cannot be marketed on the Stock Exchange. If the law finds no support, then the State too loses its moral prop and sinks into the depths of night and horror."

End of the Quote.

These words were not only applicable to the national socialist State. They were applicable to every State. They apply too to every international order and every international jurisdiction.